



## **Interim Audit Report of the Audit Division on Freedom's Defense Fund**

January 1, 2007 – December 31, 2008

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### **Why the Audit Was Done**

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.<sup>1</sup> The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

### **Future Action**

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

### **About the Committee** (p. 2)

Freedom's Defense Fund is a non-connected and multi-candidate committee headquartered in Washington, DC. For more information, see the chart on Committee Organization, p. 2.

### **Financial Activity** (p. 2)

• <b>Receipts</b>	
○ Contributions from Individuals	\$ 2,215,319
○ Offsets to Operating Expenditures	7,056
<b>Total Receipts</b>	<b>\$ 2,222,375</b>
• <b>Disbursements</b>	
○ Operating Expenditures	\$ 2,123,418
○ Contributions to Federal Candidate Committees and Other Political Committees	62,894
○ Independent Expenditures	19,001
○ Refund of Contributions	2,600
○ Other Disbursements	24,000
<b>Total Disbursements</b>	<b>\$ 2,231,913</b>

### **Finding and Recommendation** (p. 3)

- Disclosure of Independent Expenditures

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<sup>1</sup> 2 U.S.C. §438(b).

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# **Part I**

## **Background**

### **Authority for Audit**

This report is based on an audit of Freedom's Defense Fund (FDF) undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 2 U.S.C. §438(b).

### **Scope of Audit**

Following Commission approved procedures, the Audit staff evaluated various risk factors and, as a result, this audit examined:

1. The consistency between reported figures and bank records;
2. The disclosure of individual contributors' occupation/name of employer; and,
3. The disclosure of disbursements.

## Part II

### Overview of Committee

#### Committee Organization

<b>Important Dates</b>	<b>Freedom's Defense Fund</b>
• Date of Registration	June 7, 2004
• Audit Coverage	January 1, 2007 – December 31, 2008
<b>Headquarters</b>	Washington, DC
<b>Bank Information</b>	
• Bank Depositories	Three
• Bank Accounts	Four Checking Accounts
<b>Treasurer</b>	
• Treasurer When Audit Was Conducted	Scott B. Mackenzie
• Treasurer During Period Covered by Audit	Scott B. Mackenzie
<b>Management Information</b>	
• Attended FEC Campaign Finance Seminar	Yes
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

#### Overview of Financial Activity (Audited Amounts)

<b>Cash on hand @ January 1, 2007</b>	<b>\$ 22,538</b>
<b>Receipts</b>	
o Contributions from Individuals	\$ 2,215,319
o Offsets to Operating Expenditures	7,056
<b>Total Receipts</b>	<b>\$ 2,222,375</b>
<b>Disbursements</b>	
o Operating Expenditures	\$ 2,123,418
o Contributions to Federal Candidate Committees and Other Political Committees	62,894
o Independent Expenditures	19,001 <sup>2</sup>
o Refund of Contributions	2,600
o Other Disbursements	24,000
<b>Total Disbursements</b>	<b>\$ 2,231,913</b>
<b>Cash on hand @ December 31, 2008</b>	<b>\$ 13,000</b>

<sup>2</sup> This amount, as well as the amount for operating expenditures, may change as a result of the finding on page 4.

## **Part III**

### **Summary**

#### **Finding and Recommendation**

##### **Disclosure of Independent Expenditures**

The Audit staff reviewed disbursements and noted expenditures for media totaling \$78,895, which appeared to be independent expenditures that FDF disclosed as operating expenditures. Absent evidence to the contrary, the Audit staff recommends FDF amend its reports to disclose these disbursements as independent expenditures.

(For more detail, see p. 4)

## Part IV

# Finding and Recommendation

### Disclosure of Independent Expenditures

#### Summary

The Audit staff reviewed disbursements and noted expenditures for media totaling \$78,895, which appeared to be independent expenditures that FDF disclosed as operating expenditures. Absent evidence to the contrary, the Audit staff recommends FDF amend its reports to disclose these disbursements as independent expenditures.

#### Legal Standard

**A. Independent Expenditures.** An independent expenditure is an expenditure made for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party or its agents.

A clearly identified candidate is one whose name, nickname, photograph or drawing appears, or whose identity is apparent through unambiguous reference, such as "your Congressman," or through an unambiguous reference to his or her status as a candidate, such as "the Democratic presidential nominee" or "Republican candidate for Senate in this state."

Expressly advocating means any communication that:

- Uses phrases such as "vote for the President" or "re-elect your Congressman" or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge election or defeat of one or more clearly identified candidates; or
- When taken as a whole and with limited references to external events, such as proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidates. 11 CFR §§100.16(a), 100.17 and 100.22.

**B. Reporting Independent Expenditures.** When independent expenditures to the same person exceed \$200 in a calendar year, the committee must report on Schedule E (Itemized Independent Expenditures):

- Amount;
- Date when the expenditures were made;
- Name and address of the payee;
- Purpose (a brief description of why the disbursement was made);
- A statement which indicates whether the independent expenditure was in support of, or in opposition to, a particular candidate, as well as the name of the candidate,

and the office sought by that candidate (including State and Congressional district, when applicable); and,

- A certification, under penalty of perjury, as to whether the independent expenditure was made in cooperation, consultation or concert with, or at the request or suggestion of, any candidate or authorized committee or agent of such committee. 2 U.S.C. §434(b)(5)(A) and 11 CFR §104.3(b)(3)(vii).

**C. 24/48-Hour Reporting Notices for Independent Expenditures.** Political committees and other persons who make independent expenditures at any time during the calendar year—up to and including the 20th day before an election—must disclose this activity within 48 hours of the date on which the public communication is disseminated each time that the expenditures aggregate \$10,000 or more. In addition, independent expenditures that aggregate \$1,000 or more during the last 20 days—up to 24 hours—before an election require disclosure within 24 hours following the date on which the public communication is disseminated. 2 U.S.C. §434(b), (d) and (g); 11 CFR §104.4(b).

**D. Requirements for Maintaining Records.** Reporting committees are required to maintain records which provide, in sufficient detail, the information from which the filed reports may be verified. 11 CFR §104.14(b)(1).

### **Facts and Analysis**

The Audit staff reviewed FDF's disbursements to identify any independent expenditure that had been made and not properly reported. FDF disbursed \$97,896 for media buys of which \$19,001 was reported as Independent Expenditures on Schedule E and for which 24/48-hour notices were filed. However, the remaining \$78,895 was reported as operating expenditures. A review and analysis of these expenditures revealed the following:

#### **A. Media Buys – Independent Expenditures**

An ad was aired in Pennsylvania from 09/22/2008 to 11/03/2008, titled "What Murtha Says, Out of Touch"(Murtha ad) at a cost of \$60,397. Of this amount, \$19,001 was reported as independent expenditures and the remaining \$41,396 was disclosed as operating expenditures. The ad clearly identified Rep. John Murtha and Barack Obama, and expressly advocated their defeat. The ad also clearly identified John McCain and Sarah Palin, and advocated their election. As a result, the Audit staff concluded that the "Murtha" ad was an independent expenditure that should have been reported as such and that the appropriate 24/48-hour notices should have been filed.

The "Murtha" ad begins with a narrator's declaration that "Barack Obama and Jack Murtha have little respect for the people of Western Pennsylvania." It then contains audio clips of Barack Obama (Obama) and U.S. Representative John P. "Jack" Murtha ("Murtha") making negative statements about Western Pennsylvanians. Murtha is heard saying: "There's no question that Western Pennsylvania is a racist area," and Obama is heard saying that Pennsylvanians "get bitter and cling to guns and religion." Next, while the text on the screen says "MURTHA AND OBAMA



DON'T REPRESENT OUR VALUES," the narrator says: "On election day, tell Jack Murtha and Barack Obama what we think of them." The narrator ends with the statement "Vote Republican" while a picture of the Republican presidential ticket (John McCain and Sarah Palin) appears, and the text on the screen says "VOTE REPUBLICAN TUESDAY, NOVEMBER 4TH."<sup>3</sup> The ad concluded with an appropriate disclaimer for an independent expenditure.

#### *Murtha Ads with Dissemination Dates*

Of the \$60,397, FDF provided dissemination information for Murtha ad costs totaling \$34,028. These ads ran from October 21 thru November 3, 2008. Notices filed for reported independent expenditures of \$19,001 disclosed a communication date of October 29, 2008, suggesting these notices are related to ads for which dissemination dates were made available. However, the Audit staff was unable to associate the dissemination date and amounts on the 24/48-hour notices with dates and amounts on the supporting documentation. Therefore, our review of the available information indicated that FDF failed to properly disclose as independent expenditures and failed to file 24-hour notices for Murtha ad costs totaling \$15,027 (\$34,028 - \$19,001).

#### *Murtha Ads without Dissemination Dates*

Dissemination information was not provided for the remaining \$26,369 (\$60,397 - \$34,028), which limited our determination of 24/48-hour notice requirements. However, appropriate 24/48-hour notices appear to be required and were not filed. In addition, these costs should have been disclosed as independent expenditures rather than operating expenditures.

### **B. Undocumented Media Buys – Apparent Independent Expenditures**

The Audit staff also noted that media expenditures reported as operating expenditures, totaling \$37,499 (\$97,896 - \$60,397) lacked documentation and could not be associated with a specific ad or dissemination date.

The Audit staff addressed these expenditures at the exit conference and provided the FDF representative with a schedule detailing these expenditures. The FDF representative stated he will review the expenditures and contact the media vendor to request detailed analysis of the media buys. Subsequent to the exit conference, FDF provided some additional documentation which was considered in the analysis presented above.

### **Interim Audit Report Recommendation**

The Audit staff recommends that, within 30 calendar days of service of this report, FDF take the following action:

- Provide any other documentary evidence that would demonstrate that these disbursements were not independent expenditures; or

<sup>3</sup> "[I]t provides in effect a specific directive: vote for these pictured candidates. The fact that this message is marginally less direct than 'Vote for Smith' does not change its essential nature." *FEC v. Massachusetts Citizens for Life Inc.* ("MCFL") 479 U.S. 238, 239 (1986); 11 C.F.R. § 100.22(a).

- Provide documentation which details dissemination dates for those media buys which lack such information; and, for those expenditures (\$37,499) for which no documentation has been made available, provide documentation which associates these costs with specific media ads and, if the costs are related to the Murtha ad or communications that contain express advocacy, details dissemination dates;
- Submit and implement revised procedures for reporting independent expenditures, as well as for tracking dissemination dates for such expenditures to allow for timely filing of 24/48-hour reporting notices, as required; and
- Amend its reports to correct the reporting of independent expenditures, as noted above.